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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, FEBRUARY 11, 2014, 5:30 P.M.

San Diego County Administration Center

1600 Pacific Highway, Room 302/303, San Diego, 92101

(Free parking is available in the new underground parking garage on the south side of Ash Street only in the 3-hour public parking spaces)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

WRITINGS DISTRIBUTED TO THE BOARD

Pursuant to Government Code 54957.5, written materials distributed to CLERB in connection with this agenda less than 72 hours before the meeting will be available to the public at the CLERB office located at 555 W Beech Street, Suite 505, San Diego, CA.

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the January 2014 Regular Meeting (*Attachment A*)

3. PRESENTATION / TRAINING

- a) N/A

4. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

5. NEW BUSINESS

- a) Mandated Ethics Training

-continued on next page-

6. UNFINISHED BUSINESS

- a) N/A

7. BOARD MEMBER COMMENTS

8. PUBLIC COMMENTS

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three to five minutes.

9. SHERIFF / PROBATION LIAISON QUERY

10. CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports / Officer Discipline Recommendation:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).
- 12-123 / Townsend (Sustained x 3 - Deputy 3)
 - 12-129 / Olvera (Sustained x 2 – Deputy 2)
 - 12-155 / Witczak (Sustained – Deputy 1)
- b) **Conference with Legal Counsel – Anticipated Litigation:** Significant exposure to litigation pursuant to Government Code 54956.9 Subdivision B.

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (10)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

12-142

1. Misconduct/Procedure – Deputy 3 failed to provide female inmates with privacy in shower and dress-out areas.

Recommended Finding: Sustained

Rationale: The complainant stated she was denied privacy in the shower on October 21, 22, and December 3, 2012, after the Sheriff's Department modified the shower/dress out area to facilitate issuance of property to released inmates. The modification resulted in male property clerks potentially having an unobstructed view of

a female inmate shower area. A Department Information Source reported that on October 15, 2012, Las Colinas Detention Facility (LCDF) altered procedures for property room clerks to release inmate property by using a pass-through window into the shower/dress-out area. Clerks would open the pass-through window, verify the inmate's identity, issue the property, and close the window prior to female inmates changing into street clothes. On October 18, 2012 two curtains were installed in front of the dress-out stalls and another to block the shower area from the roll-up window view. The complainant acknowledged that curtains were provided, but disputed when they were installed, and did not understand why she needed to be the one to close the curtain when going into the shower area. The Sheriff's Department took measures to protect the privacy of female inmates; however, the evidence supports the allegation, in that during the period October 15-18, 2012, male property clerks were presented with an unobstructed view of the women's shower area. The evidence supports the allegation and the act was not justified.

2. Misconduct/Procedure – Deputy 3 failed to respond to grievances submitted about shower/clothing change areas at Las Colinas Detention Facility.

Recommended Finding: Not Sustained

Rationale: The complainant stated she submitted two grievances and personally spoke to an unidentified deputy to report the shower/dress-out area issue. Numerous grievances and responses were on file in her record, but none related to the shower/clothing change area. The complainant has not submitted evidence of grievances concerning this matter that were not processed in accordance with Sheriff's Policy and Procedure N.1, Grievance Procedure. LCDF interviewed the complainant concerning this matter on December 17, 2012, after being notified that the complainant's former employer had contacted Internal Affairs. There was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Procedure - Deputies 1 and 2 opened the complainant's legal mail not in her presence.

Recommended Finding: Summary Dismissal

Rationale: The complainant formally withdrew the allegation against Deputies 1 and 2 on January 28, 2013. CLERB Rules & Regulations: 5.7 Withdrawal of Complaints, states that a complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the complainant. The Review Board lacks jurisdiction.

12-143

1. Misconduct/Procedure – Deputy 1 failed to conduct a proper investigation into a reported hit and run incident resulting in injury to the complainant.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 responded inappropriately to the complainant's request for service.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure - Deputy 1 released confidential peace officer information to an unauthorized individual.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Discourtesy – Deputy 1 chastised the complainant for leaving the scene of an incident.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Discourtesy – Deputy 1 chastised the complainant for not properly presenting herself as a peace officer.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

13-003

1. Excessive Force – Deputies 1, 2 and/or 3 “rammed” the complainant’s head into a metal door.

Recommended Finding: Not Sustained

Rationale: The complainant said he offered no resistance when deputies intervened in a dispute between him and another inmate. Deputies’ reports were reviewed and consistent with one another in detailing the complainant’s resistance and their responsive actions, which resulted in the complainant’s head hitting a door. Witness statements supported the complainant being the aggressor in the inmate dispute, but did not record their observations of the deputies’ subsequent conduct after ending the inmate-on-inmate altercation. Since videotape evidence was also unavailable for review, there was insufficient evidence to prove or disprove the complainant’s reported resistance and the deputies’ subsequent actions.

2. Misconduct/Medical – The complainant did not receive follow-up medical care after a use of force incident.

Recommended Finding: Summary Dismissal

Rationale: Sheriff’s medical records were reviewed and detailed the complainant’s medical treatment he received after the use of force, as well as his subsequent medical care following this incident. However, medical care and treatment are performed by non-sworn personnel over whom CLERB has no authority. Since the Review Board lacked jurisdiction, this matter was referred to the Sheriff’s Department at the onset of this investigation.

13-006

1. Illegal Search and Seizure – Deputy 1 placed the complainant’s hands behind his back and frisked him.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied the allegation. Deputies 1 and 2 detained the complainant to investigate a possible hit and run Vehicle Code violation. The complainant specifically identified Deputy 1 as the officer that directed him to place his hands behind his back and then frisked him; however, Deputy 2 reported he conducted the pat down search for weapons. There was insufficient evidence to either prove or disprove the allegation.

2. Illegal Search and Seizure – Deputy 2 placed the complainant’s hands behind his back and frisked him.

Recommended Finding: Action Justified

Rationale: Deputy 2 detained the complainant while investigating a possible hit and run Vehicle Code violation, and conducted a pat down for weapons. The U.S. Constitution and case law permit deputies to stop, detain, and frisk persons who are suspected of criminal activity without first obtaining their consent, even though they may lack a warrant to conduct a search or probable cause to make an arrest. Pat down or limited weapons searches may be conducted for weapons only if specific facts would make a reasonable officer feel in danger. Deputy 2 determined it necessary to conduct a pat down for weapons during the detention, because the complainant reportedly had left the scene of an accident, was wearing loose fitting clothing, was possibly under the

influence, and had just emerged from his garage with access to sharp and/or hard objects which could be used as a weapon. The evidence shows the alleged act or conduct did occur, but was lawful, justified and proper.

3. Illegal Search and Seizure – Deputy 1 entered the complainant’s property without authority.

Recommended Finding: Sustained

Rationale: Deputy 1 asked the complainant for identification and was told that his drivers’ license was in a wallet on the workbench inside the garage. Deputy 1 prevented the complainant from reentry to the garage and reported that he entered the garage, retrieved the wallet, exited, and handed it to the complainant. Deputy 1 repeated the procedure to retrieve additional documentation and to provide the complainant with a chair for the complainant to be seated during the detention. Department Policy and Procedure 2.51, Arrest, Search and Seizure, requires that searches, seizures, and investigations be conducted in accordance with law. Deputy 1 did not have a warrant to enter the complainant’s garage, there were no exigent or emergency circumstances, and the complainant did not give consent to entry. The evidence supports the allegation and the warrantless entry was not justified.

4. Illegal Search and Seizure – Deputy 1 searched the complainant’s wallet to retrieve his driver’s license.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied that search of complainant’s wallet. Deputy 1 stated he retrieved the wallet and handed it to the complainant, who then removed the identification. The complainant stated that Deputy 1 retrieved his wallet from the garage and removed his identification; Deputy 2 could not recall whether Deputy 1 or the complainant removed the identification from the wallet. There was insufficient evidence to prove or disprove the allegation.

13-013

1. False Arrest – Deputy 1 issued a Citizen’s Arrest citation charging the complainant with Battery.

Recommended Finding: Action Justified

Rationale: Deputy 1 cited the complainant for violation of California Penal Code § 243, Battery, after he responded to a civil dispute between the complainant and a neighbor. The parties disputed the legality of grading a private road in front of the complainant’s residence, which resulted in a physical altercation. Department Policy and Procedure 6.110, Private Person Arrest, authorizes Deputies to make a private person arrest if they are satisfied that the private person’s arrestee committed the offense and the arrest is supported by probable cause. After speaking with the parties involved, and an independent witness, Deputy 1 determined that the complainant was the aggressor, and the neighbor was the victim in the dispute. He obtained a Citizen Arrest Declaration, and then cited and released the complainant. The evidence showed the alleged act did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 refused to issue a Citizen’s Arrest Citation against a party involved in a dispute.

Recommended Finding: Action Justified

Rationale: Deputy 1 did not cite the complainant’s neighbor for violation of California Penal Code § 243, Battery, because he determined that the complainant had been the aggressor in the altercation and there was no probable cause to cite the victim for battery. Department Policy and Procedure 6.110, Private Person Arrest, provides Deputies with authority to decline to receive a private person arrestee if not supported by probable cause. The evidence showed the alleged act did occur but was lawful, justified and proper.

13-015

1. Misconduct/Procedure – Deputy 2 failed to process the complainant’s Court documents.

Recommended Finding: Not Sustained

Rationale: Deputy 2 acknowledged receipt of a Trust Account Withdrawal/Prison Certificate form which required jail staff action, yet there was no evidence to support receipt on the date indicated by the complainant. George Bailey Detention Facility Staff (GBDF) produced a completed and signed certificate, dated approximately one month earlier, and reported that the certificate was returned to the complainant. A third certificate was processed at San Diego Central Jail and returned to the complainant, which he filed with the Courts. There is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Retaliation – Deputy 1 placed the complainant on lock down in retaliation for filing complaints against the Sheriff's Department.

Recommended Finding: Action Justified

Rationale: Deputy 1 denied that the complainant was placed in lock down in retaliation for filing complaints. The complainant was among ten inmates involved in an incident at GBDF which resulted in Disciplinary Isolation and transfer to other detention facilities. The complainant was afforded a Disciplinary Hearing as required by Detentions Policy and Procedure O.1, Disciplinary Action, and the discipline was upheld. He later grieved the outcome of the Disciplinary Hearing, was told that the discipline was rescinded, and that there was no discipline remaining in his record concerning the incident. The evidence showed that the complainant was placed in lock down because of a group incident, and the act was lawful, justified and proper.

3. Misconduct/Retaliation – Deputy 3 placed the complainant on lock down in retaliation for filing complaints against the Sheriff's Department.

Recommended Finding: Unfounded

Rationale: Deputy 3 denied any involvement in the disciplinary action taken against the complainant. The incident occurred at GBDF during an earlier shift and the inmates involved were relocated to other detention facilities. Further disciplinary review and action was conducted at San Diego Central Jail. The evidence showed that Deputy 3 was not involved in the disciplinary action taken against the complainant.

4. Misconduct/Procedure – Deputy 4 refused to reclassify the complainant for an Inmate Worker assignment.

Recommended Finding: Action Justified

Rationale: Deputy 4 responded to inmate requests on this matter, and advised the complainant that his classification designation was consistent with Detentions Policy and Procedure R.3, Inmate Classification Code-Descriptor Definitions. The complainant's criminal sophistication, 30-year criminal history, prior state prison commits, and recent behavior were considered in establishing his Medium to High Classification Level. The evidence showed that the alleged act did occur but was lawful, justified and proper.

13-019

1. Misconduct/Procedure - Deputy 1 failed to take proper action to the complainant's reports of vandalism, burglary, and an inebriated teenager.

Recommended Finding: Action Justified

Rationale: The complainant called 911 to report that her house had a broken window and had been ransacked. Deputy 1 responded by telephone to the complainant and was informed that her missing teenage son was likely responsible, after she had kicked him out of the home for smoking marijuana. Deputy 1 said the complainant told him no items were missing or stolen from the residence, and she declined a vandalism report. While in the process of gathering missing person's information, the minor returned to the home and appeared to be under the influence of unknown substances. The complainant again requested assistance, now for her inebriated teenager, but as the youth was not a threat to himself and/or others, there were no conditions for law enforcement intervention. The evidence shows Deputy 1's actions were lawful, justified and proper.

13-026

1. Misconduct/Procedure – Deputies 1 and 2 failed to investigate the complainant’s claim that his cellmate had stolen his personal property.

Recommended Finding: Action Justified

Rationale: Deputy 2 reported that he contacted the complainant and his cellmate after being informed by Jail Staff that the cellmates had been arguing. The complainant reported to Deputy 2 that his cellmate had stolen some of his property, so to avoid further confrontation, the complainant was asked to step out of the cell while his cellmate was questioned regarding this allegation. The cellmate denied that he stole any of the complainant’s property, and lacking evidence or eye witnesses, Deputy 2 lacked probable cause to charge the cellmate with PC § 488, Petty Theft, or Detentions Policy and Procedure O.3, Inmate Rules and Regulations #111- Taking Other’s Property. Deputy 1 escorted the complainant out of the cell and waited with him during Deputy 2’s interview; however, he did not recall this particular incident. The evidence showed that the deputies responded to the complainant’s claim and their actions were lawful, justified and proper.

2. Misconduct/Retaliation – Deputies 1 and 2 transferred the complainant to another cell after he complained that his cellmate had stolen his personal property.

Recommended Finding: Action Justified

Rationale: Deputies 1 and 2 responded to a dispute involving the complainant and his cellmate. The complainant was removed from the cell while his cellmate was questioned, and to avoid an escalation of this dispute, the complainant was later transferred to another cell. Deputy 2 denied that the complainant was transferred because of his claim against his cellmate, stating that he was transferred simply because he was already out of the cell when the decision to transfer him to avoid further conflict with his cellmate was made. The act did occur, but was lawful, justified and proper.

13-078

1. Misconduct-Procedure – Deputy 1 failed to process the complainant’s requests to medical to resume his medication.

Recommended Finding: Not Sustained

Rationale: The administration of medication is a function performed by Medical Staff at George Bailey Detention Facility, and not within CLERB’s jurisdiction. There were, however, no documented Sick Call requests, grievances, or requests for medical services to demonstrate that unidentified deputies prevented the complainant from receiving prescribed medications. The complainant also failed to provide copies of Sick Call requests reportedly submitted, leaving insufficient evidence to prove or disprove his allegation.

13-112

1. Excessive Force – An unidentified deputy “threw the complainant onto the floor and jumped on her.”

Recommended Finding: Summary Dismissal

Rationale: The incident reported involved another inmate with no deputy implicated. CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties, and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal. The Review Board does not have jurisdiction over the subject matter of the complaint.

End of Report